

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT HENRY MASON,

Plaintiff,

vs.

**Case No.: 2:14-cv-0410
JUDGE SMITH
Magistrate Judge Kemp**

TONY AYRES, *et al.*,

Defendants.

ORDER

On January 22, 2015, the United States Magistrate Judge issued a *Report and Recommendation* and Order recommending that Defendants' motion to dismiss be granted in part and denied in part. It was recommended that the motion be granted as to Defendants Ayres, Rath, Hall, and Dilly, but denied as to Defendants Hale and Saul. The order also denied Plaintiff's motion to appoint counsel and request for order calling up medical and mental health records. (*See Report and Recommendation*, Doc. 17). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Defendants' and Plaintiff's Objections to the Magistrate Judge's *Report and Recommendation*. (*See* Docs. 18 and 21). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Defendants Hale and Saul object to the recommendation that their motion to dismiss be denied. Specifically, they argue that the findings are contrary to law because they contradict and ignore applicable case precedent regarding deliberate medical indifference in cases of inmates

hoarding their prescription medication. After carefully reviewing the *Report and Recommendation* and Defendants' objections, the Court does not find that the Magistrate Judge's recommendation was contrary to law. At this stage in the proceedings, the Magistrate Judge found that there are sufficient factual allegations against Defendants Saul and Hale to set forth claims against them. After further discovery, however, this may be an issue that is more properly resolved on summary judgment.

Plaintiff has also filed what is titled Response to Recommendation and Order, but he also notes that he is objecting to the *Report and Recommendation*. (See Doc. 21). Essentially, Plaintiff asserts that all Defendants "opted to torture Plaintiff by the deliberate infliction of pain for punishment—advertently or inadvertently." (Doc. 21 at 1). However, Plaintiff's objections present the same issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Therefore, for the reasons stated in detail in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit.

The *Report and Recommendation*, Document 17, is hereby **ADOPTED** and **AFFIRMED**. Defendants' motion to dismiss is granted in part and denied in part. This case shall proceed against Defendant's Dr. Arthur Hale and Kenneth Saul. All other Defendants are hereby dismissed.

The Clerk shall remove Documents 8, 17, 18, and 21 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT